

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA :
 :
 :
 v. :
 :
KENNETH L. MILLER, :
 :
 Defendant. :
 :

Crim. No. 2:11-cr-161-1

Memorandum and Order: Character Evidence

Defendant Kenneth Miller has proffered that he intends to call witnesses who will testify as to his character for being a law-abiding citizen, for being a man of integrity, and for being truthful.

Under Federal Rule of Evidence 404(a), evidence of an accused's character for integrity and for being a law-abiding citizen is admissible. *See, e.g., In re Sealed Case*, 352 F.3d 409, 412 (D.C. Cir. 2003) ("Courts have held that the general character trait of law-abidingness is pertinent to almost all criminal offenses."). Evidence concerning Miller's Mennonite faith in connection with providing evidence of his good character is admissible.

Evidence of Miller's character for truthfulness is admissible if his character "for truthfulness has been attacked by opinion or reputation evidence or otherwise." Fed. R. Evid. 608(a)(2). The Government has focused its case on the credibility of statements made by Miller. The defense is permitted to introduce evidence of Miller's character for

truthfulness.

However, Federal Rule of Evidence 610 excludes evidence of Miller's religious beliefs or opinions for the purpose of showing that it affects his character for truthfulness. *See, e.g., Malek v. Fed. Ins. Co.*, 994 F.2d 49, 54 (2d Cir. 1993) (error to permit questions about religious beliefs to show effect on character for truthfulness). The defense may not offer evidence of Miller's religious beliefs as evidence of his character for truthfulness.

Dated at Burlington, in the District of Vermont, this 10th day of August, 2012.

/s/ William K. Sessions III
William K. Sessions III
United States District Court